

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE NO.689 OF 2007

ORDER:

The petitioner is A-1. The non-petitioner, A-2 is the mother of A-1. Both of them were tried in C.C.No.221 of 2001 on the file of the II Additional Munsif Magistrate, Gurajala, Guntur District, for the offence punishable under Section 498-A of the Indian Penal Code (IPC). By judgment dated 04.09.2002, the learned Magistrate found A-1 guilty of the offence under Section 498-A IPC and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay fine of Rs.5,000/- and in default of payment of fine, he shall suffer imprisonment for a period of three months. The non-petitioner, A-2 was, however, acquitted.

Aggrieved by the said conviction and sentence, the petitioner-A1 preferred Criminal Appeal No.414 of 2002 on the file of the X Additional District and Sessions Judge (FTC), Guntur at Narasaraopet and by judgment dated 05.04.2007, the learned appellate Court confirmed the conviction of the petitioner-A1 for the offence under Section 498-A IPC but reduced the sentence of imprisonment from three years to two years RI and fine of Rs.5,000/- was not disturbed. Aggrieved by the said judgment, the present revision is filed.

Learned counsel for the petitioner contended that though the evidence on record do not in any way establish that it is the petitioner-A1, who has subjected the *de facto* complainant to cruelty or in the absence of satisfactory evidence, both the Courts below have erred in finding the petitioner-A1 guilty of the offence under Section 498-A IPC. Learned counsel further submits that there are material omissions and contradictions, which affect the very fabric of the case of the prosecution and the evidence on record cannot be said to be establishing the guilt of the accused beyond reasonable doubt. In that view of the matter, learned counsel submits that the accused may be acquitted more particularly in view of the fact that based on the same evidence, the non-petitioner/A2 was acquitted.

The allegations, in brief, are as under.

The petitioner-A1 and the *de facto* complainant, who is P.W.1, were married in the year 1995. They are said to have lived happily for some time and thereafter, A1 alleged to have subjected the wife with harassment for payment of dowry. A

panchayat was conducted but even thereafter, there was no change in the petitioner. Hence, the wife started living with her parents. When the negotiations failed, she filed the present complaint.

The prosecution examined P.Ws.1 to 7 and got marked Exs.P1 to P3 in order to prove its case. P.W.1 is the wife, P.Ws.2 and 3 are the parents of P.W.1 and P.Ws.4 and 5 are the near relatives, P.W.6 is an elder in whose presence panchayat is convened. In the complaint Ex.P1, which was filed on 19.09.2001, P.W.1 stated that at the time of marriage, they gave Rs.50,000/- to the petitioner-A1 and thereafter, he addicted to bad vices and insisted the wife to get some more amount from her parents and when that was not made, he used to physically torture her. She further stated that on two or three occasions, she informed her parents about the cruel treatment of her husband and they held panchayats and sent P.W.1 to live with the petitioner-A1. However, the petitioner-A1 again started harassing her and hence, she filed the complaint seeking protection.

When the wife was examined as P.W.1, she gave evidence to the effect that for one year after marriage she lived happily with her husband and thereafter, the petitioner-A1 started harassing her for getting money from her parents. She further deposed that on two or three occasions, she brought money from her parents and handed it over to the petitioner-A1. He used to spend the entire amount for his bad vices such as taking alcohol, gambling and womanizing. She further deposed that about seven months prior to her giving evidence, a panchayat was conducted in the house of P.W.6 and thereafter she was necked out.

In the cross examination, P.W.1 stated that at the time panchayat was held in the house of P.W.6, herself and P.W.6 alone were present. She also admitted that some of her relatives are staying nearby but they are not examined. The material admission from the mouth of P.W.1 is to the effect that in the panchayat, which is said to be held in the house of P.W.6, she asked for Rs.70,000/- for giving divorce and after waiting for the said amount for nearly one year, the complaint was filed.

What could be gathered from the above evidence is that even in the panchayat, the main demand of the wife was certain amount from the husband for divorce but it is not her case that it is the husband who demanded money from her. Further more, she admitted that even though she brought amounts from the parents and gave to the petitioner-A1, he spend the same for bad vices but that material statement is not

found in Ex.P1 or in statement under Section 161 Cr.P.C.

P.W.2 is the mother of P.W.1. Her evidence is that immediately after marriage for one year A1 and P.W.1 lived happily and thereafter, A1 started demanding money to be brought from their house. She deposed that panchayats were conducted and one panchayat was held in the house of P.W.6. Admittedly, she was not present at the time of panchayat. In the cross examination, she admitted that for about a year prior to holding of panchayat in the house of P.W.6, P.W.1 was living in her house. She further deposed that after panchayat, P.W.1 joined with A1 and lived with him for about two years. She further stated that one year after her marriage, panchayat was held in her house and two or three months thereafter A-1 came and took P.W.1. She admitted that she do not know whether any other panchayats were conducted. P.W.2 further admitted that in the panchayat, the elders advised some properties to be kept in the joint name of P.W.1 and A-1 as A-1 is spending lavishly.

P.W.3 is the father of P.W.1. He deposed that after marriage, P.W.1 and A-1 lived together and A-1 started harassing P.W.1 demanding more money. He further spoke about the panchayats said to have been held in the house of P.W.6 where he claims that himself, his wife and P.W.6 were present. He further deposed that since panchayat failed, the complaint was filed.

P.W.4 deposed that when A-1 was harassing P.W.1, a panchayat was held in the house of P.W.6 where himself, P.W.3 and P.W.6 were present. In the said panchayat, A-1 insisted for some money to be brought by P.W.1 and since that failed, the complaint was lodged. According to P.W.3, the said panchayat was held three months prior to his giving evidence. He further deposed that in the said panchayat, they asked A-1 to earmark some land in favour of P.W.1 to which A-1 did not agree. P.W.5 deposed that A-1 was addicted to bad vices and was staying idle and has become a vagabond demanding additional money from P.W.1 and because of ill-treatment, P.W.1 left A-1 and filed complaint.

P.W.6, who is said to be an elder in whose house panchayat was held, deposed that about a year prior to his giving evidence, P.W.1 and one Vardhanamma came to his house and informed that P.W.1 gave Rs.30,000/- to A-1 and installed Public Telephone at Piduguralla, that P.W.1 and A-1 stayed there for three to four months and spent the said amount, P.W.1 informed him that A1 was not residing in the house and became vagabond and she requested some relief. P.W.1 informed him

that she wanted to live separately with A-1, so that some portion of land can be cultivated. He denied knowledge of any other details.

The evidence of P.W.6 completely shatters the case of the prosecution. The evidence of P.W.1 is that she has been subjected to harassment demanding additional amount and that it was not met by the panchayat held in the house of P.W.6. What all transpired in the panchayat as per the evidence of P.Ws.2, 3 and 5 is that P.W.1 did not complain anything before the elders about demand of money but on the other hand, she told before the elders that P.W.1 herself gave Rs.30,000/- to A-1 and installed Public Telephone Booth and A-1 was not taking care of her properly and she wants to live separately with A-1.

The evidence of P.W.1 that she was subject to cruelty by the accused demanding dowry or additional amount is not spoken to by any of the witnesses. For that matter, even P.W.1 herself did not specifically say that she was being subjected to cruelty demanding money. On the other hand, as stated in the cross examination, she admitted that before the panchayat and elders her demand was divorce for which purpose she demanded Rs.70,000/-. It is also in her evidence that they waited for about a year for A-1 to pay the said amount and only when that amount was not paid, she lodged the complaint.

As already stated, the evidence of P.Ws.1 to 5 is altogether contrary to what P.W.6 has deposed. Both the Courts below have not appreciated the evidence of P.W.6 and ignored material contradictions stating that they are trivial in nature. In order to punish a person under Section 498-A IPC, there must be cogent and convincing evidence to prove the cruel treatment, which resulted in lodging the complaint, which can be taken as ground for cruelty. In the instant case, what is noticed is that absolutely there is no evidence as to what type of cruelty or harassment meted out by the wife and that apart from the other relatives, none of the neighbours living around the house of P.W.1 and A-1 were examined for speaking about the harassment meted out to P.W.1.

Learned counsel for A-1 submitted that after the present case is filed, the wife herself filed O.P. for divorce and obtained the same and she has remarried and living separately.

Taking into consideration the above facts, I feel the prosecution could not prove the fact that it is the petitioner/Accused No.1 who has subjected the wife to

cruel treatment attracting the provisions of Section 498-A IPC.

In that view of the matter, the findings of both the Courts are liable to be set aside and the Criminal Petition is, accordingly, allowed. Fine amount, if any, paid by the petitioner shall be returned to him. Miscellaneous petitions, if any, pending shall stand closed.

(M.S.K.JAISWAL, J)

7th October 2015

RRB